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June 1, 2011

VIA HAND DELIVERY

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
999 E Street, NW
Washington, DC 20463

Re: RR 11L-07 (Republican National Committee)

Dear Mr. Jordan:

This office represents the Republican National Committee ("RNC") and its treasurer Anthony W. Parker (collectively "Respondents") in the above-captioned matter.

We have received your letter dated April 12, 2011 enclosing Reports Analysis Division ("RAD") Referral 11L-07. As detailed below, there is no reason to believe a violation occurred. The Respondents used their best efforts to timely and accurately file the disclosure reports at issue. When the Respondents subsequently learned through the RNC's self-initiated internal review that some of the reported debt figures were incorrect, they took proactive and prompt action to amend the reports at issue where necessary. Best efforts is the touchstone of every political committee's reporting requirements, and the Respondents exceeded this standard. If the Commission concludes despite the Respondents' conscientious and proactive measures that additional action is nonetheless warranted, this matter should be assigned to the Alternative Dispute Resolution ("ADR") division. However, because there is nothing to indicate that the Respondents failed to use best efforts— and in fact the record indicates best efforts were used — a finding of no reason to believe is the appropriate disposition of this matter.

FACTUAL BACKGROUND

The RNC is a national political party committee that files disclosure reports with the Commission on a monthly basis pursuant to Commission regulations. See 11 C.F.R. § 104.5(c)(4). The RNC timely filed its 2010 May, June, July, August, and September Monthly Reports on the 20th day of each respective month as required by Commission regulations. See 11 C.F.R. § 104.5(c)(3). The foregoing RNC monthly reports duly disclosed a voluminous number of transactions as detailed below:

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	Pages	Number of Itemized Receipts	Total Receipts	Number of Itemized Disbursements	Total Disbursements	Number of Schedule D Entries
May Monthly	2805	6303	\$6,864,684.20	2072	\$5,738,571.28	0
June Monthly	3773	9182	\$6,456,892.97	2080	\$6,368,432.75	19
July Monthly	4651	10276	\$5,907,896.67	3577	\$7,593,538.73	62
August Monthly	5551	10104	\$5,538,202.93	3096	\$11,136,850.39	94
September Monthly	8051	19728	\$7,952,298.80	2806	\$8,555,101.52	124
TOTAL	24831	55593	\$32,719,975.57	13631	\$39,392,494.67	299

During the spring and summer of 2010, the RNC, upon the arrival of a new Chief of Staff and Finance Director, conducted a thorough review of recent invoices and contracts to verify the legitimacy and accuracy of billings and to determine the extent to which various vendor services, as reflected in such billings, had been actually received by the RNC. As part of this process, the RNC conducted a self-initiated internal review of invoices recently received and paid and the corresponding RNC disclosure reports filed with the Commission. As the RNC has previously indicated to the Commission:

[t]he review included an evaluation of invoices received and paid by the Republican National Committee (RNC) to ensure the legitimacy of billings and the accuracy of the RNC's reports to the FEC. As a result of these good-faith efforts, and in compliance with FEC reporting regulations, we amended our reports appropriately. These efforts have also resulted in new processes to prevent similar issues from arising in the future, and should any additional information be found to warrant further amending existing reports, we will do so accordingly.

RNC Miscellaneous Electronic Submissions filed on September 3, 2010, December 8, 2010, December 15, 2010, and January 18, 2011.

As a result of this proactive internal review, the RNC filed amendments to its 2010 May and June reports on July 20, 2010, and filed amendments to its 2010 June, July, August, and September reports on October 18, 2010.¹ In total, these amendments included an additional 279 debt entries disclosed on Schedule D. These 279 additional debt entries represented a mere 0.4% of the 69,524 itemized

¹Additional amendments to some 2010 reports were filed in late 2010 and early 2011. These subsequent amendments made either minor changes or no changes to the amount of debt incurred during the various reporting periods.

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transactions that were duly disclosed on the RNC's original May, June, July, August, and September monthly reports.² Moreover, while seemingly large when viewed in isolation, the additional debts disclosed on these amendments represented only 2.2% of the RNC's total activity for the 2009-2010 election cycle.³

On July 30, 2010, August 10, 2010, November 3, 2010, November 12, 2010, and December 14, 2010, the Commission sent Requests for Additional Information ("RFAs") to the RNC requesting further information regarding certain increases in debt disclosed on the foregoing amendments. The RNC timely filed responses, which included the miscellaneous electronic submission noted above, on September 3, 2010, December 8, 2010, December 15, 2010, and January 18, 2011.

THE LAW

I. Political Committee Best Efforts Reporting Standard

Best efforts is the touchstone of every political committee's reporting obligation. The Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), provides that

[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act . . .

2 U.S.C. § 432(i). See also 11 C.F.R. § 104.7(a) (same).

In Lovely v. FEC, 307 F. Supp. 2d 294 (D. Mass. 2004), the United States District Court for the District of Massachusetts held that the Commission is required as a matter of law to consider whether the treasurer of a political committee used best efforts to file the political committee's FEC

² The number of additional Schedule D entries was calculated by comparing the number of Schedule D entries on each amendment to the number of Schedule D entries on the original report (or in the case of the second amendment to the June Monthly Report, the previous amendment) and totaling the number of additional entries. The total number of transactions disclosed on the original reports was calculated by adding the number of itemized receipt transactions, itemized disbursement transactions, Schedule D debt entries, and Schedule C loan entries. Data on the number of transactions was obtained from electronic versions of the RNC's filings. The number of additional debt entries on the amended reports was then divided by the total number of transactions on the original reports, resulting in a figure of 0.4%.

³ This amount was calculated by dividing the increase in debt by the total of the RNC's total receipts and disbursements for the 2009-2010 cycle. The cycle total was calculated using data on Column B of Lines 6(c) and 7 of the most recent amendments to the RNC's 2009 and 2010 Year End Reports.

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reports in a timely manner. Prior to Lovely, the Commission had only considered whether a political committee had exercised best efforts regarding the disclosure of certain contributor background information. In the Lovely decision, the court noted the best efforts provision's legislative history and emphasized that

[t]he best efforts test is specifically made applicable to recordkeeping requirements in both Title 2 and Title 26. The test of whether a committee has complied with the statutory requirements is whether its treasurer has exercised his or her best efforts to obtain, maintain, and submit the information required by the Act. If the treasurer has exercised his or her best efforts, the committee is in compliance.

Id. at 299 (quoting H.R. Rep. No. 92-422, at 14 (1979), reprinted in 1979 U.S.C.A.N. 2860, 2873) (emphasis in original). See also id. ("[T]he application of the best efforts test is central to the enforcement of the recordkeeping and reporting provisions of the Act.").

In the aftermath of the Lovely decision, the Commission issued a policy statement clarifying its enforcement policy regarding the circumstances under which political committees are deemed to be in compliance with the reporting and recordkeeping requirements of the Act. See Statement of Policy Regarding Treasurers' Best Efforts To Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31438 (June 7, 2007) ("Best Efforts Policy Statement"). Through issuance of the Best Efforts Policy Statement, the Commission made clear for the first time that

[w]hen the treasurer of a political committee demonstrates that best efforts were used to obtain, maintain, and submit the information required by FECA, any report or records of such committee shall be considered in compliance with FECA...

Best Efforts Policy Statement at 31438. The Commission emphasized that it "intends to consider the best efforts of a committee under section 432(i) when reviewing all violations of the recordkeeping and reporting requirements of FECA, whether arising in its traditional enforcement docket (Matters Under Review), audits, or the ADR Program." Id. at 31440 (emphasis added). See also id. ("The Commission considers best efforts to be a standard that has diligence as its essence." (internal quotations and citation omitted)).

The Best Efforts Policy Statement indicates that the Commission will generally find that a political committee has met the requirements of best efforts if several criteria are satisfied. These key criteria include the presence of "trained staff responsible for obtaining, maintaining, and submitting campaign finance information in the requirements of the Act as well as the committee's procedures, recordkeeping systems, and filing systems . . ." Id. The criteria also include whether "[u]pon

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discovering the [reporting] failure, the committee promptly took all reasonable additional steps to expeditiously file any unfiled reports and correct any inaccurate reports." Id. "When treasurers make a sufficient showing of best efforts, the treasurers or committees shall be considered in compliance with FECA." Id. Accordingly, any determination of whether a violation of FECA's reporting requirements has occurred is based not on what the reporting committee disclosed on its original reports, but rather on whether the reporting committee exercised its best efforts in filing the original reports and any subsequent amendments thereto.

II. Political Committee Debt Reporting Provisions

FECA and Commission regulations require political committees to disclose certain information regarding outstanding debts. Commission regulations state that:

Each report filed under 11 CFR 104.1 shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee.

11 C.F.R. § 104.3(d). The regulations also contain provisions concerning the continuous reporting of debts:

Debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. See 11 CFR 104.3(d). These debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. Where such debts and obligations are settled for less than their reported amount or value, the reporting committee shall include a statement as to the circumstances and conditions under which the debt or obligation was extinguished and the amount paid.

11 C.F.R. § 104.11(a).

Commission regulations indicate when the information detailed above should be disclosed on an FEC report:

A debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation, including a

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loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date. See 11 CFR 116.6. If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the political committee shall either amend the report(s) containing the estimate or indicate the correct amount on the report for the reporting period in which such amount is determined.

11 C.F.R. § 104.11(b).

Commission regulations also require political committees to disclose disputed debts under certain circumstances. The regulations provide that "[a] political committee shall report a disputed debt in accordance with 11 C.F.R. 104.3(d) and 104.11 if the creditor has provided something of value to the political committee." 11 C.F.R. § 116.10(a).

Neither the Act nor Commission regulations define the terms "debt" or "incurred" within the meaning of the foregoing reporting provisions. An explanation and justification for regulations concerning debt reporting issued in 1990 notes that a previous version of the regulation required debts to be reported "as of the time of the transaction," but indicates that the language of the regulation was being modified at that time to require reporting "as of the date the debts are incurred." 55 Fed. Reg. 26385 (June 27, 1990). The Commission may have amended the regulation in this fashion after recognizing that the date a given debt is incurred is not necessarily the same as the date an underlying transaction takes place. The Commission has not promulgated any additional debt reporting regulations during the last 21 years.

III. Obligation of Political Committees to Confirm the Factual Accuracy of Invoices Received and Debts Reported to the Commission

Commission regulations require political committees to ensure the accuracy of disclosure reports they file with the Commission. Under Commission regulations:

[e]ach treasurer of a political committee, and any other person required to file any report or statement under these regulations and under the Act, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it.

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11 C.F.R. § 104.14(d).

Other Commission actions make clear that political committees are required to verify the accuracy of potential debts prior to attesting to such accuracy by including them on disclosure reports. For example, RAD may send a RFAI if a committee submits an amended report with a decrease in the amount of debt or disbursements disclosed.

In addition, the Commission's 2000 Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Funding ("Control and Compliance Manual") provides detailed guidance on accounting and compliance procedures. Although the Control and Compliance Manual is directed towards presidential campaign committees, the Commission's guidance is applicable to other types of political committees as well. In a section of the manual regarding the processing of disbursements, the Control and Compliance Manual makes clear that reporting committees are responsible for verifying the factual accuracy of invoices and for ensuring that the various vendor services associated with each invoice had actually been received by the reporting committee. The Control and Compliance manual states that when an invoice is received, "[t]he expense can be readily matched to the Commitment/Expense Authorization Request and cleared for payment if there is assurance that the goods or services were received." Control and Compliance Manual at 125 (emphasis added).

DISCUSSION

For the reasons set forth below, the Commission should find no reason to believe that Respondents violated the Act and should promptly close this matter.

I. The Commission Should Find No Reason to Believe a Violation Occurred Because Respondents Met Their Best Efforts Reporting Obligations

The Act and Commission regulations require political committees to disclose information regarding debts on disclosure reports. See 11 C.F.R. § 104.3(d), § 104.11(a), and § 104.11(b). Commission regulations further require political committees to verify that reports filed with the Commission are accurate. See e.g., 11 C.F.R. § 104.14(d). In order to accurately report their disbursements, debts, and other obligations, reporting committees must necessarily spend time carefully reviewing the invoices they receive before (1) paying the invoices and reporting such payments to the Commission (if the invoiced services were received), (2) not paying the invoices and disclosing the invoiced amounts as debts owed or as disputed debts (if the invoiced services were received), or (3) not paying the invoices and taking no further action (if the invoiced services were not received). Failure

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to take adequate time to thoroughly review invoices would potentially cause political committees to pay invoices for goods and services that were never received by the committee and thereby file inaccurate disclosure reports to the Commission. Similarly, reporting committees must necessarily take the time to evaluate and determine the accuracy and legitimacy of purported debts owed by the committee before reporting any such debts to the Commission; again, the failure to conduct such a review would potentially cause reporting committees to file erroneous disclosure reports to the Commission.

The RNC timely filed its 2010 May, June, July, August, and September Monthly reports by the 20th day of each respective month. As was outlined above, the foregoing RNC monthly reports — which collectively totaled almost 25,000 pages — duly disclosed a tremendous number of transactions, including more than 55,000 itemized receipts (comprising nearly \$33 million of receipts) and more than 13,000 itemized disbursements (comprising over \$39 million of disbursements).

During the spring and summer of 2010, the RNC, at its own initiative, conducted a thorough and rigorous internal review process during which the RNC reviewed thousands of invoices and accounting entries and filed necessary amendments to its disclosure report debt schedule. As noted above, although the newly disclosed debts seemingly constituted a large dollar amount when viewed in isolation, the RNC's debt schedule amendments constituted a tiny fraction of the total amount of activity that the RNC disclosed on the reports at issue. Specifically, the additional debt entries on the amended reports represented a mere 0.4% of the 69,524 itemized transactions that were disclosed on the RNC's original May, June, July, August, and September monthly reports. Furthermore, the additional debt that was disclosed through these amendments represented a mere 2.2% of the RNC's total activity for the 2009-2010 election cycle.

The FEC has determined that the best efforts standard for the filing of political committee disclosure reports has "diligence as its essence." Best Efforts Policy Statement at 31440. As detailed above, the RNC timely filed its 2010 May, June, July, August, and September monthly reports and duly disclosed thousands and thousands of transactions in reports that collectively spanned nearly 25,000 pages. Upon the discovery of certain reporting issues — which constituted only a tiny fraction of the RNC's overall activity — the RNC took aggressive, proactive action to conduct a comprehensive internal review and file amended reports where necessary as expeditiously as possible. See Best Efforts Policy Statement at 31440 (best efforts satisfied when "[u]pon discovering the [reporting] failure, the committee promptly took all reasonable additional steps to expeditiously file any unfiled reports and correct any inaccurate reports"). In light of the foregoing, the Respondents have met their best efforts and satisfied their reporting obligations under FECA and Commission regulations. Accordingly, the Commission should find no reason to believe a violation occurred and should dismiss this matter.

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II. Were the Commission to Believe That Additional Action is Warranted, This Matter Should be Transferred to ADR for Appropriate Disposition

If the Commission were to conclude that the Respondents' diligence and proactive corrective measures did not meet the best efforts standard, assigning this matter to ADR would be proper for any further action. This matter involves highly technical and vague debt reporting requirements, many of which have not been defined with any specificity in either the Act or the regulations, and concerning which the Commission has issued little or no guidance to reporting committees in recent decades. The Commission has assigned a number of matters involving technical debt reporting issues to ADR.

The following matters involving an increase in debts on a political committee's amended report were assigned to ADR:⁴

- ADR 503 (Alaskans for Begich) (11.7% debt increase as compared with total activity--2010 Cycle, 3.8% debt increase as compared with total activity--2008 Cycle);
- ADR 434 (Ned Lamont for Senate) (5.7% debt increase as compared with total activity);
- ADR 408 (Matt Brown for U.S. Senate) (3.9% debt increase as compared with total activity);
- ADR 263 (Walcher for Congress) (3.2% debt increase as compared with total activity);
- ADR 261 (Mike Thompson for Congress) (2.6% debt increase as compared with total activity);
- ADR 472 (Oberweis for Congress) (2.2% debt increase as compared with total activity);
- ADR 289 (Melissa Bean for Congress) (1.7% debt increase as compared with total activity);

⁴ For each matter identified, the percentage of total election cycle activity that the increase in debt represented is listed after the name of the respondent. These amounts were calculated by dividing the increase in debt by the sum of the respondent's total receipts and disbursements for the relevant election cycle. For unauthorized committees, cycle totals were calculated using data on Column B of Lines 6(c) and 7 of the most recent amendments to Year End Reports covering that election cycle. For authorized committees, cycle totals were calculated using data in Column B of Lines 16 and 22 of the Post-Election Detailed Summary Page for that election cycle. If the increase in activity occurred on a report covering an election cycle in which the candidate was not a participant, data from the last report of that election cycle was used.

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- ADR 504 (Washington State Democratic Central Committee) (1.7% debt increase as compared with total activity);
- ADR 387 (Fastert for Congress Committee) (1.4% debt increase as compared with total activity);
- ADR 296 (Porter for Congress) (1.0% debt increase as compared with total activity);
- ADR 251 (Libertarian National Committee) (0.9% debt increase as compared with total activity);
- ADR 366 (Michigan Republican Party) (0.9% debt increase as compared with total activity); and
- ADR 324 (Democratic Executive Committee of Florida) (0.85% debt increase as compared with total activity).⁵

A number of the matters that the Commission chose to transfer to ADR involved increases in debt representing a percentage of activity for the election cycle that was two to three times larger than the debt increase at issue in the present matter. Furthermore, seven of these cases involved six-figure increases in debt.⁶ For example, ADR 503 (Alaskans for Begich) addressed an amendment to Alaskans for Begich's 2008 30 Day Post-General Report which disclosed an additional \$309,907.76 in debt. This amount represented 3.8% of Alaskans for Begich's activity during the 2008 election cycle. Alaskans for Begich also amended its 2008 Year End Report to disclose additional debts of \$109,370.32. This amount represented 11.7% of the campaign's activity between the day after the 2008 General Election and the campaign's termination. In an ADR settlement agreement, Alaskans for Begich agreed to pay a civil penalty of \$3,500 and accept several nonmonetary terms. Should the

⁵ Importantly, most of the foregoing debt reporting matters assigned to ADR arose before the Commission promulgated the Best Efforts Policy Statement making clear that the Commission "intends to consider the best efforts of a committee under section 432(f) when reviewing all violations of the recordkeeping and reporting requirements of FECA . . ." Best Efforts Policy Statement at 31440. See also *id.* ("When treasurers make a sufficient showing of best efforts, the treasurers or committees shall be considered in compliance with FECA."). Accordingly, the Commission should consider transferring this matter to ADR, but only if the Commission were to conclude that the Respondents failed to use their best efforts regarding the disclosure reports at issue. As demonstrated above, however, the Respondents met their best efforts obligations and therefore complied fully with FECA and Commission regulations.

⁶ These matters included ADR 263 (\$100,794.51), ADR 324 (\$106,699.28), ADR 366 (\$147,183.40), ADR 387 (\$146,686.87), ADR 408 (\$149,505.01), ADR 472 (\$218,197.54), and ADR 503 (\$309,907.70). In ADR 324, the respondent agreed to nonmonetary terms only and did not pay a civil penalty. Similarly, in ADR 472, the respondent agreed to terminate and did not pay a civil penalty.

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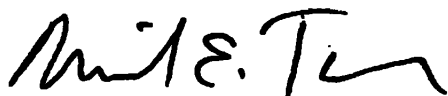
Commission find that further action is necessary in the matter at issue, the above listed cases suggest that the current matter should be transferred to ADR. Given the range of .85% to 11.7% of debt increase as a percentage of total activity in the foregoing cases, the RNC's 2.2% increase falls easily within the scope of debt reporting increases referred to ADR.

Similarly, in ADR 408 (Matt Brown for Senate), the respondent amended its 2006 April and July Quarterly reports to include an additional \$149,505.01 in previously undisclosed debt. This amount represented 3.9% of the Brown Campaign's activity for the 2006 election cycle. In an ADR settlement agreement with the Commission, the Brown Campaign agreed to pay a \$1,100 civil penalty and terminate the campaign committee. Again, where the RNC percentage is only 2.2% as compared to the Brown Campaign's 3.9%, a decision to transfer the present matter to ADR would be consistent with past Commission decisions concerning similar technical debt reporting issues. In addition to these cases, numerous other matters involving technical debt reporting issues and increases in receipts or disbursements have been addressed by assigning the matters to ADR. If the Commission concludes that further action is warranted in this matter, Commission should follow the same course.

CONCLUSION

For all the foregoing reasons, the Commission should find no reason to believe a violation occurred because the Respondents used their best efforts concerning the disclosure reports at issue and thereby complied with the Act and Commission regulations. If the Commission believes that additional action is warranted, this matter should be assigned to ADR for appropriate disposition.

Respectfully submitted,



Michael E. Toner

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